

AMENDED IN ASSEMBLY APRIL 20, 2005

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 528

Introduced by Assembly Member Frommer

February 16, 2005

~~An act to add Section 3497 to the Civil Code, relating to public nuisances.~~ *An act to add Title 2.5 (commencing with Section 3497) to Part 3 of Division 4 of the Civil Code, relating to civil actions.*

LEGISLATIVE COUNSEL'S DIGEST

AB 528, as amended, Frommer. ~~Public nuisances; remedies~~ *Civil actions: Public Health and Environmental Enforcement Law of 2005.*

Existing law generally defines "nuisance" as anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway. Under existing law, the remedies for nuisances are indictment or information, civil action, or abatement, as specified. A public nuisance, as defined, may be abated by any public body or officer authorized by law, or a private person if it is specially injurious to him or her.

This bill would authorize any person with a beneficial interest in the outcome to commence a civil action to enforce specified laws, including regulations, permits, and orders issued pursuant to those laws, that provide for the protection or enhancement of public health or the environment. The bill would create the Public Health and

Environmental Enforcement Fund, into which civil penalties awarded for these actions would be deposited for allocation, upon appropriation, to the state or local governmental entity with the principal authority to enforce the statute under which the action was commenced for environmental enforcement or restoration of the environment in the community where the violation occurred.

~~Existing law provides that the remedies against a public nuisance are indictment or information, a civil action, or abatement.~~

~~This bill would provide that these remedies are cumulative and not exclusive.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 3497 is added to the Civil Code, to~~
2 ~~read:~~

3 ~~3497. The remedies provided by this title are cumulative and~~
4 ~~not exclusive.~~

5 ~~SECTION 1. Title 2.5 (commencing with Section 3497) is~~
6 ~~added to Part 3 of Division 4 of the Civil Code, to read:~~

7
8 *TITLE 2.5. PUBLIC HEALTH AND ENVIRONMENTAL*
9 *ENFORCEMENT LAW OF 2005*

10
11 ~~3497. (a) This title shall be known and may be cited as the~~
12 ~~Public Health and Environmental Enforcement Law of 2005.~~

13 ~~(b) The Legislature finds and declares as follows:~~

14 ~~(1) California has been a national and world leader in~~
15 ~~adopting measures to protect public health and the environment.~~

16 ~~(2) The severe fiscal crises that have faced California~~
17 ~~governments at all levels have severely reduced the enforcement~~
18 ~~of environmental laws by public agencies.~~

19 ~~(3) The lack of enforcement of laws to protect the public~~
20 ~~health and the environment has resulted in exposure of the public~~
21 ~~to increased risk of disease and of harm to the state's natural~~
22 ~~resources.~~

23 ~~(4) The federal government and 16 other states have laws that~~
24 ~~allow personal enforcement of public health and environmental~~
25 ~~laws. These laws have resulted in greater protection for public~~

1 *health and the environment than can be achieved through public*
2 *enforcement alone.*

3 *(5) Personal enforcement allows those who are affected by*
4 *pollution and other environmental injuries to protect themselves,*
5 *their families, their property and resources that they utilize from*
6 *violation of laws intended to protect public health and the*
7 *environment.*

8 *(6) Personal enforcement of environmental laws should be*
9 *structured to provide the Attorney General with an exclusive*
10 *opportunity for the Attorney General to enforce public health and*
11 *environmental claims in the first instance, to intervene of right in*
12 *all proceedings brought by private parties, and to review all*
13 *private settlements.*

14 *(7) Personal enforcement should be limited to those who have*
15 *standing, and the judicial remedies available should be limited to*
16 *those that directly benefit public health and the environment.*
17 *Civil penalties obtained through personal enforcement should be*
18 *paid to public entities.*

19 *(8) Personal enforcement of public health and environmental*
20 *laws will lead to greater protection of both public health and the*
21 *environment.*

22 *3498. (a) Except as provided in subdivision (e), any person*
23 *with a beneficial interest in the outcome may commence a civil*
24 *action against any person, and against the United States, and*
25 *any officer, instrumentality, or agency of the United States, to the*
26 *extent the United States has waived sovereign immunity, to*
27 *enforce the following laws, including regulations, permits, and*
28 *orders issued pursuant to those laws, that provide for the*
29 *protection or enhancement of public health or the environment:*

30 *(1) Article X of the California Constitution.*

31 *(2) Division 1 (commencing with Section 101), Division 2*
32 *(commencing with Section 700), Division 3 (commencing with*
33 *Section 2000), Division 4 (commencing with Section 3000),*
34 *Division 5 (commencing with Section 5000), and Division 6*
35 *(commencing with Section 5500) of the Fish and Game Code.*

36 *(3) Division 7 (commencing with Section 12500) of the Food*
37 *and Agricultural Code.*

38 *(4) Title 7 (commencing with Section 65000) and Title 7.2*
39 *(commencing with Section 66600) of the Government Code.*

(5) Division 20 (commencing with Section 24000), Division 26 (commencing with Section 39000), Division 104 (commencing with Section 106500), Division 105 (commencing with Section 120100), and Division 106 (commencing with Section 123100) of the Health and Safety Code, other than Chapter 6.6 (commencing with Section 25249.5) of Division 20, which is enforceable pursuant to its own separate enforcement provision.

(6) The Public Resources Code, other than Division 13 (commencing with Section 21000), Division 15 (commencing with Section 25000), and Division 20 (commencing with Section 30000), which are enforceable pursuant to their own separate enforcement provision.

(7) Division 7 (commencing with Section 13000) of the Water Code.

(b) The complaint for an action brought pursuant to this title shall allege that the violations for which a remedy is sought are either of the following:

(1) Threatened, repeated, or ongoing.

(2) A wholly completed act that is causing ongoing risk to public health in excess of any requirement imposed by statute, regulation, or permit, or ongoing impact to the environment in violation of any requirement imposed by statute, regulation, or permit.

(c) Any of the following measures of relief may be awarded pursuant to this title:

(1) Civil penalties, as authorized pursuant to the law for which enforcement is sought. Notwithstanding this paragraph, civil penalties may not be awarded in an action brought pursuant to this title against the State of California, or any of its officers, agencies, or political subdivisions.

(2) Declaratory relief.

(3) Equitable relief, which may include, but is not limited to, a prohibitory or mandatory injunction, and restoration of the environment.

(d) Unless otherwise provided by law, civil penalties awarded for an action brought pursuant to this title shall be remitted to the Controller for deposit in the Public Health and Environmental Enforcement Fund, which is hereby created. Moneys in the fund, upon appropriation, shall be allocated to the state or local governmental entity with the principal authority to

1 *enforce the statute under which the action was commenced.*
2 *Notwithstanding any other law, moneys in the fund shall be used*
3 *exclusively for environmental enforcement or restoration of the*
4 *environment in the community where the violation occurred.*

5 *(e) (1) No action may be commenced pursuant to this title*
6 *prior to 60 days after the plaintiff has given notice, including the*
7 *identities of the then known prospective defendants, of the*
8 *alleged violation to the Attorney General.*

9 *(2) If the Attorney General has commenced and is diligently*
10 *prosecuting a civil action based upon the same violation alleged*
11 *in the notice given under paragraph (1) against the parties*
12 *named by the plaintiff in the notice given under paragraph (1),*
13 *no action may be commenced pursuant to this title. Nothing in*
14 *this paragraph prevents a court from granting the person who*
15 *provided notice under paragraph (1) permission to intervene in*
16 *the civil action filed by the Attorney General.*

17 *(3) Paragraphs (1) and (2) do not apply to actions where the*
18 *plaintiff seeks a temporary restraining order or a preliminary*
19 *injunction to enjoin activity alleged to be undertaken without, or*
20 *in violation, of a permit or circumstances that may constitute an*
21 *imminent and substantial endangerment to public health or the*
22 *environment.*

23 *(4) Paragraph (2) shall not act as a bar to any action brought*
24 *pursuant to this title against any person that is not a defendant in*
25 *the action by the Attorney General.*

26 *(5) The Attorney General may intervene as a matter of right in*
27 *any action brought pursuant to this title, but that intervention*
28 *will not act as a bar to the continuing action of the plaintiff.*

29 *(f) An action pursuant to this title may be brought in any court*
30 *of competent jurisdiction.*

31 *(g) No action brought pursuant to this title shall be settled*
32 *prior to 45 days following the receipt of a copy of the settlement*
33 *by the Attorney General, except by approval of a court.*

34 *3499. (a) A nonprofit corporation that has been recognized*
35 *as tax exempt under Section 501(c) of the Internal Revenue Code*
36 *has a beneficial interest in the outcome of an action if it, or one*
37 *or more of its members, has a beneficial interest in the outcome*
38 *of the action. Membership in the nonprofit corporation shall be*
39 *determined by reference to its bylaws.*

1 ***(b) As used in this title, the following terms have the following***
2 ***meanings:***

3 ***(1) “Environment” includes any land, water, fish, or wildlife***
4 ***resource subject to the public trust or land, water, air, minerals,***
5 ***vegetation, fish, wildlife, silence, historic or aesthetic sites, or***
6 ***any other natural resource that, irrespective of ownership,***
7 ***contributes, or in the future may contribute, to the health, safety,***
8 ***welfare, or enjoyment of the public, or to ecological balance.***

9 ***(2) “Person” includes any person, firm, association,***
10 ***organization, partnership, trust, corporation, company, the State***
11 ***of California, and any of its officers, agencies, and political***
12 ***subdivisions.***

13 ***(3) “Settled” or “settlement” includes any consent judgment,***
14 ***stipulated judgment, settlement agreement, or any dismissal of***
15 ***the action accompanied by a payment of money or other thing of***
16 ***value.***

17 ***3500. The provisions of this title are not exclusive, and the***
18 ***remedies provided for in this title are supplementary and in***
19 ***addition to any other remedies provided under any other law,***
20 ***including, but not limited to, Chapter 2 (commencing with***
21 ***Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure,***
22 ***or available under common law. If the remedies provided in this***
23 ***title are duplicative of any other remedies available under any***
24 ***other law or common law, the plaintiff shall elect which remedy***
25 ***or remedies to seek.***